

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

ROSA MARIA PENA MARTINEZ,) Case No. CV 18-06155-AS
Plaintiff,)
v.) **MEMORANDUM OPINION**
ANDREW M. SAUL, Commissioner)
of the Social Security)
Administration,¹)
Defendant.)

PROCEEDINGS

On July 16, 2018, Plaintiff filed a Complaint seeking review of the denial of her application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11, 21). On December 27, 2018, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 13-14). On June 14,

¹ Andrew M. Saul is now the Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Nancy A. Berryhill in this case. See Fed.R.Civ.P. 25(d).

1 2019, the parties filed a Joint Stipulation ("Joint Stip.") setting
2 forth their respective positions regarding Plaintiff's claims. (Docket
3 Entry No. 25).

4

5 The Court has taken this matter under submission without oral
6 argument. See C.D. Cal. L.R. 7-15.

7

8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

9

10 On February 26, 2014, Plaintiff, formerly employed as an adult home
11 care worker, childcare worker, mechanical assembler (antenna, watches,
12 airplane parts), and agricultural field worker (see AR 62-65, 228-33,
13 239-44), filed an application for Disability Insurance Benefits,
14 alleging an inability to work because of a disabling condition since
15 November 18, 2012. (See AR 198-201).² The Commissioner denied
16 Plaintiff's application initially and on reconsideration. (AR 91, 105).

17

18 On November 29, 2016, the Administrative Law Judge ("ALJ"), Kyle E.
19 Andeer, heard testimony from Plaintiff (represented by counsel) and an
20 impartial vocational expert ("VE"), Steve Hughes. (See AR 45-74). On
21 January 5, 2017, the ALJ issued a decision denying Plaintiff's
22 application. (See AR 29-36). Applying the five-step sequential
23 process, the ALJ found at step one that Plaintiff had not engaged in
24 substantial gainful activity since November 18, 2012, the alleged onset
25 date, through June 30, 2015, the date last insured. (AR 31). At step

26

27 ² On the same date, Plaintiff filed an application for
28 Supplemental Security Income, alleging a disability since November 18,
2012. (See AR 202-07). Plaintiff's application for SSI was denied for
reasons related to Plaintiff's and her husband's financial resources.
(See AR 108-15).

1 two, the ALJ determined that Plaintiff had the following severe
2 impairments -- "obesity; degenerative disc disease, lumbar spine;
3 affective disorder; diabetes mellitus; [and] status post shoulder
4 repair. (AR 31). At step three, the ALJ determined that Plaintiff did
5 not have an impairment or combination of impairments that met or equaled
6 the severity of one of the listed impairments. (AR 31-33).

7

8 The ALJ then determined that Plaintiff had the residual functional
9 capacity ("RFC")³ to perform light work,⁴ as defined in 20 C.F.R. §
10 404.1567(b) with the following limitations:

11

12 [Plaintiff] can push/pull frequently but not constantly;
13 cannot climb ropes, ladders and scaffolds; can climb ramps or
14 stairs occasionally; can balance frequently; can stoop,
15 crouch, kneel and crawl occasionally; must avoid concentrated
16 exposure to extreme heat, wetness and humidity; must avoid
17 hazards including moving machinery and unprotected heights;
18 can do simple routine, repetitive tasks; can interact with
19 coworkers, supervisors and the public occasionally; and can
20 be employed in a low stress job, with only occasional
21 decision-making or judgment required and with only occasional
22 changes in the work setting.

23

24

25 ³ A Residual Functional Capacity is what a claimant can still do
26 despite existing exertional and nonexertional limitations. See 20
C.F.R. §§ 404.1545(a)(1).

27 ⁴ "Light work involves lifting no more than 20 pounds at a time
28 with frequent lifting or carrying of objects weighing up to 10 pounds." 20 C.F.R. § 404.1567(b).

1 (AR 33-35). At step four, the ALJ determined that Plaintiff was capable
2 of performing past relevant work as a small products assembler as
3 actually and generally performed (AR 35) and therefore was not disabled
4 within the meaning of the Social Security Act. (AR 35-36).

5

6 The Appeals Council denied Plaintiff's request for review on May
7 22, 2018. (See AR 1-5). Plaintiff now seeks judicial review of the
8 ALJ's decision, which stands as the final decision of the Commissioner.
9 See 42 U.S.C. §§ 405(g), 1383(c).

10

11 **STANDARD OF REVIEW**

12

13 This Court reviews the Commissioner's decision to determine if it
14 is free of legal error and supported by substantial evidence. See
15 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
16 evidence" is more than a mere scintilla, but less than a preponderance.
17 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
18 whether substantial evidence supports a finding, "a court must consider
19 the record as a whole, weighing both evidence that supports and evidence
20 that detracts from the [Commissioner's] conclusion." Aukland v.
21 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)(internal quotation
22 omitted). As a result, "[i]f the evidence can support either affirming
23 or reversing the ALJ's conclusion, [a court] may not substitute [its]
24 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
25 880, 882 (9th Cir. 2006).⁵

26

27 ⁵ The harmless error rule applies to the review of
28 administrative decisions regarding disability. See McLeod v. Astrue,
640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676,
(continued...)

PLAINTIFF'S CONTENTIONS

Plaintiff alleges that the ALJ erred in failing to properly: (1) assess Plaintiff's subjective symptom testimony and Plaintiff's daughter's testimony; (2) assess the opinions of Plaintiff's treating physicians; and (3) determine whether Plaintiff could perform past relevant work. (See Joint Stip. at 3-7, 11-22).

DISCUSSION

After consideration of the record as a whole, the Court finds that the Commissioner's findings are supported by substantial evidence and are free from legal error.

A. The ALJ Properly Assessed The Testimony and Statements Provided by Plaintiff and Plaintiff's Daughter

Plaintiff asserts that the ALJ did not provide clear and convincing reasons for discrediting Plaintiff's testimony about her symptoms and limitations and asserts that the ALJ did not provide germane reasons for discrediting Plaintiff's daughter's testimony. (See Joint Stip. at 3-7, 11-12). Defendant contends that the ALJ properly discounted the testimony of Plaintiff and her daughter. (See Joint Stip. at 7-11).

11

⁵ (...continued)
679 (9th Cir. 2005)(An ALJ's decision will not be reversed for errors
that are harmless).

1 1. Legal Standard

2

3 A. Plaintiff's Testimony

4

5 Where, as here, the ALJ finds that a claimant suffers from a
6 medically determinable physical or mental impairment that could
7 reasonably be expected to produce her alleged symptoms, the ALJ must
8 evaluate "the intensity and persistence of those symptoms to determine
9 the extent to which the symptoms limit an individual's ability to
10 perform work-related activities for an adult . . ." Soc. Sec. Ruling
11 ("SSR") 16-3p, 2017 WL 5180304, *3.⁶

12

13 A claimant initially must produce objective medical evidence
14 establishing a medical impairment reasonably likely to be the cause of
15 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
16 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
17 claimant produces objective medical evidence of an underlying impairment
18 that could reasonably be expected to produce the pain or other symptoms
19 alleged, and there is no evidence of malingering, the ALJ may reject the
20 claimant's testimony regarding the severity of his or her pain and
21 symptoms only by articulating specific, clear and convincing reasons for
22 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.
23 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
24 2007)); see also Smolen, supra; Robbins v. Social Sec. Admin, 466 F.3d
25

26 ⁶ SSR 16-3p, which superseded SSR 96-7p, is applicable to this
27 case, because SSR 16-3p, which became effective on March 28, 2016, was
28 in effect at the time of the Appeal Council's May 22, 2018 denial of
Plaintiff's request for review. 20 C.F.R. § 404.1529, the regulation on
evaluating a claimant's symptoms, including pain, has not changed.

1 880, 883 (9th Cir. 2006); Reddick v. Chater, 157 F.3d 715, 722 (9th Cir.
2 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997).
3 Because the ALJ does not find that Plaintiff was malingering, the "clear
4 and convincing" standard stated above applies.
5

6 Generalized, conclusory findings do not suffice. See Moisa v.
7 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004)(the ALJ's credibility
8 findings "must be sufficiently specific to allow a reviewing court to
9 conclude the [ALJ] rejected [the] claimant's testimony on permissible
10 grounds and did not arbitrarily discredit the claimant's testimony")
11 (citation and internal quotation marks omitted); Holohan v. Massanari,
12 246 F.3d 1195, 1208 (9th Cir. 2001)(the ALJ must "specifically identify
13 the testimony [the ALJ] finds not to be credible and must explain what
14 evidence undermines the testimony"); Smolen, 80 F.3d at 1284 ("The ALJ
15 must state specifically which symptom testimony is not credible and what
16 facts in the record lead to that conclusion.").
17

18 B. Plaintiff's Daughter's Testimony
19

20 The ALJ is required to give germane reasons for rejecting or
21 partially rejecting lay witness testimony. See Carmickle v. Comm'r v.
22 Soc. Sec. Admin., 533 F.3d 1155, 1162-63 (9th Cir. 2008); Greger v.
23 Barnhart, 464 F.3d 968, 972 (9th Cir. 2006); Lewis v. Apfel, 236 F.3d
24 503, 511 (9th Cir. 2001); Smolen, 80 F.3d at 1288-89.
25 //
26 //
27 //

1 2. The ALJ's Credibility Findings

2
3 Plaintiff made the following statements in a Function Report -
4 Adult dated April 10, 2014 (see AR 254-61):

5 She lives with family in a trailer. She suffers pain in
6 her back, right arm, and right shoulder. (See AR 254-55).

7 As a result of her conditions, she cannot carry anything
8 heavy, can barely move stuff around, and cannot sleep (back
9 pain). She does not take care of anybody else or pets. She
10 cannot bathe because she cannot reach with her right arm.
11 She has trouble with caring for her hair (she cannot use her
12 right hand, only her left hand). She cannot shave because
13 she cannot move her right arm. She has trouble feeding
14 herself and using the toilet because of pain in her right
15 arm. She does not need reminders taking care of personal
16 needs or taking medicine. She daily prepares meals (mostly
17 on the stove or sometimes sandwiches) every 2 to 3 hours,
18 which takes 15 to 30 minutes; her depression and anxiety
19 cause her to eat a lot. She cleans the house, but not very
20 much (20 minutes most); her family sometimes helps her. She
21 does not drive; she gets rides from others when she goes out.
22 She shops in stores 1 to 2 times a week. She is not able to
23 pay bills, handle a savings account, or use a checkbook/money
24 orders, but she is able to count change. Her ability to
25 handle money has changed because of her inability to use her
26 right hand. Her only interest is watching television. She
27 does not spend time with others. She goes to church every
28 Sunday, usually with somebody. She does not have any
 problems getting along with others. She does not feel like
 going out with others because of her pain. (See AR 255-59).

 Her conditions affect her abilities to lift, squat,
 bend, stand, reach, walk, sit, kneel, stair-climb, see,
 concentrate, use hands, and memory. She can walk for about
 20 to 30 minutes before needing to rest, and can resume
 walking after resting for 15 minutes. She cannot
 concentrate; whether she finishes what she starts "depends."
 She struggles with following written instructions. She can
 follow spoken instructions but then forgets them. She gets
 along well with authority figures, but does not have contact
 with them. She has never been fired or laid off from a job
 because of problems getting along with other people. She
 handles stress by lying down in her room, and handles changes
 in routine "so so." Her unusual behaviors or fears are
 fear/anxiety of being alone and sometimes seeing things that
 are not there. (See AR 259-61).

1 Plaintiff made the following statements in a Function Report -
2 Adult dated September 2, 2016 (see AR 301-10):

3 She lives with family in a mobile home. She suffers
4 pain in her back, right arm, right shoulder, hip and right
5 leg. She is not able to work because of her pain; she cannot
6 use her right arm, bend, pick up anything, sit (more than 10
minutes), walk (more than 7 minutes), clean her house
(without the help of her daughters or a friend). (See AR
301, 306).

7 She needs help getting out of bed, making her bed,
8 getting up from the toilet, showering, shaving, grooming,
9 cleaning, cooking, and going to bed. She does not take care
10 of anybody else or pets. As a result of her conditions, she
11 can no longer cook, clean, shower, work, go to the gym, dance
12 or take care of her grandchildren, or sleep (she has to
change positions all night). She is not able to dress
herself, bathe (without assistance), care for her hair (she
can only use her left hand), shave (without assistance), feed
herself (she can only use her left hand), use the toilet
(without assistance getting up). She needs reminders from
her daughters to shower and to take medicine. She does not
prepare her own meals because she cannot stand for very long
or use her right hand; her family does all the cooking. She
does not do any house or yard work because of her extreme
pain; her family does them for her. She goes out riding in
a car or walking (she can only walk for seven minutes, and
her daughters are afraid she will fall or hurt herself). She
does not shop; her daughters do all the shopping. She is not
able to pay bills, handle a savings account or use a
checkbook/money orders (she never had a checkbook or savings
account), but she is able to count change. Her ability to
handle money has changed because she forgets and asks the
same question. Her interests are reading the Bible (she can
not read as long as before) and going for walks (she can no
longer speed walk). She spends time with others daily
because she needs assistance with everything. She goes to
church on Sundays. She needs to be reminded to go to the
doctor and needs to be accompanied. She does not have any
problems getting along with others. During all conversations
she complains about pain. (See AR 302-06).

23 Her conditions affect her ability to lift, squat, bend,
24 stand, reach, walk, sit, kneel, stair-climb, see, memory,
25 complete tasks, concentrate, understand, follow instructions,
and use her hands. She can pay attention for a few minutes
before she starts feeling pain. She does not follow written
instructions well. She does not follow spoken instructions
well (the instructions need to be repeated a few times). She
gets along well with authority figures. She has never been
fired or laid off because of problems getting along with
other people. She does not handle stress well (she gets
frustrated and aggressive), and does not handle changes in

1 routine well (she tends to forget). Her unusual behavior or
2 fear is feeling very afraid. She daily uses a cane
3 (prescribed in 2013) and glasses/contact lenses. (See AR
306-07).

4 For her conditions, she currently takes the following
5 medicines (none of which cause side effects): Duloxetine, 30
6 mg; Gabapentin, 300 mg; Methacarbanol, 750 mg (4 times/day);
7 Topiramate, 2 mg (2 times/day); Cyclobenzaprine, 10 mg (3
8 times/day); Aspirin, 81 mg (1 time/day); Fluoxetine, 20 mg (1
9 time/day), Glipizide, 10 mg (1 time/day); Lisinopril, 12.5 mg
10 (1 time/day); Metformin, 1000 mg (2 times/day); Naproxin, 500
11 mg (2 times/day); Simuastatin, 40 mg (1 time/day), Tramadol,
12 50 mg (2 times/day); Victoza, 20 mg (1 time/day); Lantus, 20
13 mg (1 time/day); Norco, 10.325 mg (1 time/day); Invocana, 300
14 mg (1 time/day); Januvia, 300 mg (1 time/day); Metformin,
15 1000 mg (2 times/day); and Bupropion, 150 mg (1 time/day).
16 (See AR 308-10).

17 Plaintiff gave the following testimony at the administrative
18 hearing (see AR 46-63):

19 In November 2012, when she was taking care of an elderly
20 person, she was cleaning the bathroom and fell, injuring her
21 back and her entire right side (arm, shoulder). She has not
22 worked since then. She filed a Workers' Compensation case
23 which settled in February 2014. She did not get continuing
24 medical care from the accident. She continues to suffer pain
25 mostly in the lower back, and still has pain in her arm,
26 shoulder, hand (numbness and pain) leg, knee and foot (heel,
27 bottom of foot, and toes). Since the accident she has fallen
28 several times which has caused her pain to get worse. The
29 pain in her foot interferes with her activity; she feels pain
30 in her foot even when she is just sitting (but it is not as
31 painful). She is unable to do her past assembler jobs
32 (antennas, watches) because she cannot sit or stand for a
33 long time. (See AR 46-52, 62-63).

34 Her doctor has told her that they want to give her
35 injections for her knee. However, her diabetes doctor told
36 her that injections sometimes make the sugar level go higher.
37 (See AR 49).

38 She last had physical therapy for her right shoulder in
39 2012 or 2013. That physical therapy caused her pain
40 sometimes. (See AR 48).

41 She takes Norco (pain medication) two times a day,
42 although her doctor prescribed it only one time a day. She
43 also takes Naproxin, but that does not help much with the
44 pain ("it helps control the pain level a little bit"). See
45 AR 52-53).

1 Her diabetes causes problems with her eyes. She checks
2 her blood sugar twice a day. Her blood sugar level is over
3 200. She began to see a new diabetes doctor (Dr. Pinzone) a
4 month ago. Dr. Pinzone stopped a lot of her medications and
5 gave her a different medication. (See AR 49-50, 58-59).

6 She weighs 270 pounds (she once weighed 300 pounds).
7 Her weight causes the pain in her lower back to be worse.
8 She stopped taking medication which had caused her to gain
9 weight. (See AR 60).

10 In May 2016, she went to the hospital because of
11 breathing problems. The electrocardiograms did not reveal
12 any issues. Since then she has had heart palpitations. (See
13 AR 61-62).

14 Following the accident she suffered bad depression. She
15 sometimes suffers bad depression and anxiety, which causes
16 her to eat (which is bad for her diabetes). She sometimes
17 does not feel like waking up, showering or leaving the room.
18 She gets depressed/suicidal when she thinks about not being
19 able to work and help others (such as her brother who
20 underwent heart surgeries). At one point (after she had told
21 her doctor she wanted to die), her doctor called police who
22 took her to a hospital for a mental evaluation. (See AR 50,
23 55-59).

24 She has seen a psychiatrist (Dr. Wilkinson) and a
25 psychologist (Dr. Alvarado). She regularly takes the
26 medications prescribed by Dr. Wilkinson, but they do not work
27 some days. She stopped taking the medications 15 days ago
28 because they made her feel worse. She does not think Dr.
29 Alvarado is helping her. Although she does not feel the
30 doctors have helped her with her depression, she was told
31 that her diabetes has contributed to her depression. (See AR
32 56-58).

33 She lives with her in-laws in a trailer. Her day
34 consists of getting up, getting coffee from the stove (the
35 coffee pot is already there), preparing food (like a
36 sandwich), sitting for a little while to eat, standing,
37 taking a shower (with her daughter's assistance), and
38 sometimes cleaning the trailer (with her daughter's
39 assistance). She showers every two days. (See AR 54-55,
40 59).

41 She is able to walk for about 10 minutes. She began
42 using a cane about two months ago (when she fell). Getting
43 up using the cane causes swelling and numbness in the hand
44 and pain in the arm. She can stand for about 5 minutes (to
45 wash dishes). She can sit for 10 to 12 minutes, but needs to
46 move around and change positions. She can lift about 10
47 pounds. Since she does not drive, she has to ask others for
48 rides to get to her doctors' appointments. (See AR 50, 53-
49 54, 61-63).

1 In a Function Report - Adult - Third Party dated November 9, 2016,
2 Plaintiff's daughter, who is 28 years-old and spends 4 days a week with
3 Plaintiff, made essentially the same statements as those made by
4 Plaintiff in her Function Report - Adult dated September 2, 2016 (with
5 the exception of Plaintiff's medications). (See AR 311-18).

7 After briefly summarizing Plaintiff's testimony (see AR 33)⁷, the
8 ALJ wrote: "After careful consideration of the evidence, the undersigned
9 finds that the claimant's medically determinable impairments could
10 reasonably be expected to cause the alleged symptoms; however, the
11 claimant's statements concerning the intensity, persistence and limiting
12 effects of these symptoms are not entirely consistent with the medical
13 evidence and other evidence in the record for the reasons explained in
14 this decision." (AR 20).

16 The ALJ addressed Plaintiff's testimony as follows:

18 The claimant suffered a work injury on November 18, 2012, the
19 alleged onset date. She stated that she slipped and fell and
20 landed on her glutes and right upper extremity (Exhibit 1F at
1).

21 She was treated through the Workers' Compensation system.
22 Treatment included acupuncture, opioid medications,
23 chiropractic care, and physical therapy (Exhibits 1F; 2F).
24 She was given temporary work restrictions of lifting,
25 pushing, and pulling only 10 pounds and limit (sic) sitting,

27 ⁷ The ALJ wrote:

29 The claimant testified that she has problems with her
30 right arm and back. She stated that she continues to
31 have pain in her lower back with any motion. The
32 claimant reported should (sic) emergency department pain,
33 but stated that she has not had any treatment for her
34 shoulder recently. The claimant reported depression and
35 anxiety.

1 standing, and walking to 15 minutes or 30 minutes followed by
2 a 5-minute break or change in position (Exhibit 2F at 2, 29,
3 48, 124, 128, 149). The claimant stopped seeing Dr.
4 Moelleken in January 2014 (Exhibit 9F at 1; 13F at 1). It
does not appear that she ever received injections, nor was
surgery recommended. She stated that she settled her
Workers' Compensation case in February 2014 with no ongoing
medical coverage.

5 She returned to Dr. Moelleken, however, over two years later
6 in March 2016 asking for pain medications (Exhibit 9F at 1).
7 In that interim, the claimant generally reported no pain
8 symptoms or back or joint problems to her primary care
9 provider (Exhibit 11F). The claimant saw Dr. Moelleken in
August 2016, but reported that she had not taken pain
medications for over two weeks, suggesting that her pain was
not particularly severe (Exhibit 12F at 1). The claimant
then followed up more regularly with Dr. Moelleken receiving
Norco (Exhibit 16F).

10 This history suggests that while the claimant may have
11 sustained an injury at the alleged onset date, she was
12 managed with only conservative care and eventually settled
13 the claim with no provision for ongoing medical care. This
14 suggests that the claimant's symptoms resolved
satisfactorily. The claimant had reported that her
medications were effective and allowed her to do more
activities around the house and self-care (Exhibit 2F at 5).

15 The claimant's physical examinations were generally normal
16 (Exhibits 14F; 18F) and the imaging and diagnostic studies in
the record do not show the types of severe findings that
would be expected were the claimant's symptoms as severe as
alleged. MRI of the lumbar spine showed degenerative disc
disease and mild canal stenosis and mild foraminal narrowing
(Exhibit 3F at 115-116). MRI of the right hip showed only
minimal spurring (Exhibit 3F at 121). MRI of the right knee
did not show definite tear (Exhibit 3F at 125). MRI of the
right shoulder showed mild to moderate supraspinatus and
infraspinatus tendinosis (Exhibit 3F at 127). X-ray of right
shoulder was normal (Exhibit 1F at 1).

21 Follow up for the claimant's diabetes mellitus did not show
22 severe symptoms that would limit her ability to perform work
activity greater than found herein (Exhibit 4F; 11F). There
23 is also mention that the claimant's compliance may not have
been full (Exhibit 11F at 9, 23, 31; 14F at 9, 61; 18F at 3).

24 As for the claimant's mental symptoms, suicidal ideation was
25 reported once (Exhibit 2F at 21). She was then prescribed
medications and her symptoms improved (Exhibit 2F at 5).
Reports from some treatment providers do not suggest that she
26 would have limitations greater than those assigned herein
(Exhibit 17F at 1; 19F).

27 The record reflects daily activities of the claimant that are
28 not limited to the extent one would expect, given the

complaints of disabling symptoms and limitations. The claimant reported she is able to handle finances and go out alone (Exhibit 6F at 3).

(AR 33-34).

After discussing the opinions of the orthopedic consultative examiner, the psychological consultative examiner, and Plaintiff's treating psychologist, as well as the weight given to such opinions (see AR 35), the ALJ addressed Plaintiff's daughter's testimony as follows:

"The undersigned considered the statement of the claimant's daughter at Exhibit 16E and notes that this statement details the same types of complaints and symptoms already alleged by the claimant. Thus, the undersigned finds that this evidence is cumulative with respect to the allegations by the claimant and, as explained above, the objective evidence provides good reasons for questioning the reliability of the claimant's subjective complaints. Accordingly, the undersigned gives this statement little weight." (AR 35).

3. The ALJ's Assessments of Testimony Provided by Plaintiff and Plaintiff's Daughter

A. Plaintiff's Testimony

Substantial evidence supports the ALJ's finding that Plaintiff's testimony about the intensity, persistence and limiting effects of the symptoms related to her injuries suffered during her November 2012 accident was not credible.⁸

⁸ Since Plaintiff appears to challenge the ALJ's reasons for discounting Plaintiff's testimony concerning the limitations resulting from her 2012 accident, the Court need not address the ALJ's reasons for (continued...)

1 The ALJ properly discounted Plaintiff's testimony concerning the
2 limiting effects of the physical injuries she suffered during her
3 November 2012 accident based on her positive response to conservative
4 treatment (see AR 34). See Tommasetti v. Astrue, 533 F.3d 1035, 1040
5 (9th Cir. 2008) ("The record reflects that Tommasetti responded favorably
6 to conservative treatment including . . . the use of anti-inflammatory
7 medication [and] a transcutaneous electrical nerve stimulation
8 unit Such a response to conservative treatment undermines
9 Tommasetti's reports regarding the disabling nature of his pain.");
10 Crane v. Shalala, 76 F.3d 251, 254 (9th Cir. 1996) ("the evidence
11 suggesting that [the claimant] responded well to treatment" supports an
12 adverse credibility finding); see also Warre v. Comm'r of the SSA, 439
13 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled
14 effectively with medication are not disabling for the purpose of
15 determining eligibility for SSI benefits."). As the ALJ noted,
16 Plaintiff received a variety of treatments following the accident,
17 including acupuncture, opioid medications, chiropractic care, and
18 physical therapy (see AR 321-34 [Performance Therapy Center records from
19 January 4, 2013 to January 22, 2013], AR 335-484 [The Spine and
20 Orthopedic Center records from February 12, 2013 to January 14, 2014,
21 several of which noted that Plaintiff had been prescribed Norco (see AR
22 483, 473, 465-66, 454, 438, 427, 412, 386, 340 [Progress Notes dated
23 February 12, 27, 2013, March 18, 2013, April 16, 2013, June 3, 2013,
24 July 2, 2013, August 6, 2013, October 31, 2013, December 5, 2013, and
25

28 ⁸ (...continued)
discounting Plaintiff's testimony concerning her limitations related to
her other impairments (i.e., diabetes, affective disorder).

1 January 13, 2014]), but those records, as well as other records from The
2 Spine and Orthopedic Center (see AR 485-627), do not contain any
3 notations that Plaintiff received injections or was recommended surgery.
4

5 In addition, as Defendant points out (see Joint Stip. at 9),
6 several medical records expressly state that Plaintiff received only
7 conservative treatment (see AR 81 [Timothy Schumacher, Ph.D., a State
8 Agency medical consultant, when discussing the history following the
9 accident, stated: "[W]orkmens comp IHSS comes in from York[,] they were
10 treating her for lumbar spine awaiting block 112013[,] PT and other
11 conservative tx/pain meds did not help much[.]"], 382 [In a Progress
12 Note dated November 11, 2013, Alan P. Moelleken, M.D., Plaintiff's
13 treating physician at The Spine and Orthopedic Center, when discussing
14 Plaintiff's records, stated: "Denial of the medial branch block
15 received on 9/03/2013. It appears that the reason for the denial of the
16 right medial branch block at L4-5 and L5-S1 facet joints was that she
17 had vertebral pain noted and it was not expressly stated that she has
18 failed conservative treatment. . . . She has also tried conservative
19 management with medications, a home exercise program, physical therapy,
20 chiropractic therapy, and acupuncture, all which she failed."], 478 [In
21 an Orthopedic I M. Price, M.D. at the Spine and Orthopedic Center,
22 stated that "[f]uture medical considerations includes a hip arthroscopy
23 specialist pending her response to more conservative treatment."]).
24 Compare Boitnott v. Colvin, 2016 WL 362348, *4 (S.D. Cal. Jan. 29,
25 2016)(finding that the ALJ improperly discredited the plaintiff's
26 testimony based on the conservative and routine nature of the
27 plaintiff's treatment because inter alia "[t]here was no medical
28

1 testimony at the hearing or documentation in the medical record that the
2 prescribed medication constituted 'conservative' treatment of [the
3 plaintiff's] conditions"). Moreover, as the ALJ noted, Plaintiff
4 herself admitted the effectiveness of the medications in alleviating her
5 symptoms and limitations. (See AR 385 [Progress Note dated October 1,
6 2013, noting: "She reports some constipation with the medications and
7 states that the Norco and cream decrease her pain by about 50 percent
8 temporarily and increases her function."], 366 [Progress Report dated
9 November 18, 2013, noting: "In regards to the medications, she has been
10 using Norco 7.5/325 mg up to three times a day for pain as well as
11 Ducoprene for opioid-induced constipation. . . . She notes that with
12 the Norco and Ducoprene that these have been effective and allowing her
13 to do more activities around the house and provide self-care."], 339
14 [Progress Report dated January 13, 2014 (same)].
15

16 The ALJ also properly discredited Plaintiff's testimony about the
17 limiting effects of the physical injuries she suffered during the
18 November 2012 accident because Plaintiff's assertions were not supported
19 by the objective medical evidence (see AR 34). See Burch v. Barnhart,
20 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical evidence
21 cannot form the sole basis for discounting pain testimony, it is a
22 factor that the ALJ can consider in his credibility analysis."); Rollins
23 v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) ("While subjective pain
24 testimony cannot be rejected on the sole ground that it is not fully
25 corroborated by objective medical evidence, the medical evidence is
26 still a relevant factor in determining the severity of the claimant's
27 pain and its disabling effects."); SSR 16-3p, *5 ("objective medical
28

1 evidence is a useful indicator to help make reasonable conclusions about
2 the intensity and persistence of symptoms, including the effects those
3 symptoms may have on the ability to perform work-related activities").
4 As the ALJ pointed out, the medical records revealed that Plaintiff's
5 physical examinations were mostly unremarkable. (See AR 321 [Physical
6 Therapy Initial Examination report dated January 4, 2013, noting that
7 "Xray right shoulder normal"], 599-600 [MRI of the lumbar spine on May
8 1, 2013], 603 [MRI of the thoracic spine dated April 30, 2013], 605-06
9 [MRI of the left hip dated April 2, 2013], 607-08 [MRI of the right hip
10 dated April 2, 2013], 609-10 [MRI of the right knee], 611-12 [MRI of the
11 right shoulder], 613 [X-ray of the orbits dated February 28, 2013], 351-
12 53, 355-57, 370-72, 374-76, 389-91, 399-401, 407-09, 415-17, 419-21,
13 437-39, 441-43, 449-51, 465-67, 469-71, 477-79, [The Spine and
14 Orthopedic Center, Progress Reports dated February 12, 2013, March 13,
15 2013, March 18, 2013, April 16, 2013, May 29, 2013, June 3, 2013, July
16 9, 2013, July 10, 2013, August 7, 2013, August 29, 2013, September 4,
17 2013, October 30, 2013, November 5, 2013, December 11, 2013, January 7,
18 2014, containing normal physical examination or orthopedic examination
19 findings], 833-35, 844-47, 859-61, 869-71, 886-88, 936-38, 941-43, 995-
20 98, 1001-03 [Clinicas Del Camino Real, Inc. Office Visit notes and
21 Physician's Assistant notes dated July 16, 2014, October 25, 2014,
22 January 7, 2015, May 18, 2015, August 3, 2015, June 13, 2016, July 11,
23 2016, July 18, 2016, and August 8, 2016, containing normal physical
24 examination findings]).

25
26
27 The ALJ also discounted Plaintiff's testimony about the limiting
28

1 effects of the physical injuries suffered during the November 2012
2 accident based on her ability to perform certain daily activities, such
3 as handling finances and going out alone, was not a clear and convincing
4 reason. (AR 34). However, this was not a clear and convincing reason
5 for discrediting Plaintiff's symptom testimony. See Vertigan v. Halter,
6 260 F.3d 1044, 1050 (9th Cir. 2001) ("[T]he mere fact that a plaintiff
7 has carried on certain daily activities . . . does not in any way
8 detract from her credibility as to her overall disability. One does not
9 need to be 'utterly incapacitated' in order to be disabled."); Reddick,
10 supra ("Only if the level of activity were inconsistent with the
11 Claimant's claimed limitations would these activities have any bearing
12 on Claimant's credibility."); Ghanim v. Colvin, 763 F.3d 1154, 1165 (9th
13 Cir. 2014) ("However, there is no indication here that the limited
14 activities Ghanim engaged in, often with the help of a friend, either
15 comprised a 'substantial portion' of Ghanim's day, or were
16 'transferrable' to a work environment."); Morgan v. Comm'r of Soc. Sec.
17 Admin., 169 F.3d 595, 600 (9th Cir. 1999). However, because the ALJ
18 also provided valid reasons for discounting Plaintiff's testimony, as
19 discussed above, any error in discounting Plaintiff's testimony based
20 on her activities of daily living is harmless. See Carmickle, supra,
21 533 F.3d at 1162 (the ALJ's error in giving two invalid reasons for
22 partially discrediting the plaintiff's testimony was harmless where the
23 ALJ gave valid reasons for partially discrediting the plaintiff's
24 testimony); see also Tommasetti, 533 F.3d at 1038 (an ALJ's error is
25 harmless "when it is clear from the record . . . that it was
26 'inconsequential to the ultimate nondisability determination.'").
27
28

B. Plaintiff's Daughter's Testimony

The ALJ's determination that Plaintiff's daughter's testimony was not supported by the objective evidence was a germane reason for finding that the testimony lacked credibility. See Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2015)(inconsistency with the medical evidence is a germane reason for discrediting the testimony of a lay witness); Lewis, supra ("One reason for which an ALJ may discount lay testimony is that it conflicts with medical evidence."); Vincent v. Heckler, 739 F.2d 1393, 1395 (9th Cir. 1984) ("The ALJ properly discounted lay witness testimony that conflicted with the available medical evidence.")).

B. The ALJ Properly Assessed the Opinions of Plaintiff's Treating Physicians, Sandra Alvarado, Ph.D. and Alan P. Moelleken, M.D.

Plaintiff asserts that the ALJ failed to properly assess the opinions of two of Plaintiff's treating physicians, Drs. Alvarado and Moelleken. (See Joint Stip. at 13-18). Defendant asserts that the ALJ properly considered the opinions of Drs. Alvarado and Moelleken (See Joint Stip. at 16-17).

An ALJ must take into account all medical opinions of record. 20 C.F.R. § 404.1527(b). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995). The medical

1 opinion of a treating physician is given "controlling weight" so long
2 as it "is well-supported by medically acceptable clinical and laboratory
3 diagnostic techniques and is not inconsistent with the other substantial
4 evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(c)(2).
5 "When a treating doctor's opinion is not controlling, it is weighted
6 according to factors such as the length of the treatment relationship
7 and the frequency of examination, the nature and extent of the treatment
8 relationship, supportability, and consistency of the record." Revels
9 v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017); see also 20 C.F.R. §
10 404.1527(c)(2)-(6).

12
13 If a treating or examining doctor's opinion is not contradicted by
14 another doctor, the ALJ can reject the opinion only for "clear and
15 convincing reasons." Carmickle, supra, 533 F.3d at 1164; Lester, 81
16 F.3d at 830. If the treating or examining doctor's opinion is
17 contradicted by another doctor, the ALJ must provide "specific and
18 legitimate reasons" for rejecting the opinion. Orn v. Astrue, 495 F.3d
19 625, 632 (9th Cir. 2007); Reddick v. Chater, 157 F.3d 715, 725 (9th Cir.
20 1998); Lester, supra. "The ALJ can meet this burden by setting out a
21 detailed and thorough summary of the facts and conflicting clinical
22 evidence, stating his interpretation thereof, and making findings."
23 Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir. 2017)(citation
24 omitted). Finally, when weighing conflicting medical opinions, an ALJ
25 may reject an opinion that is conclusory, brief, and unsupported by
26 clinical findings. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.
27 2015); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).
28

1 1. Dr. Alvarado

2
3 In a Mental Impairment Questionnaire dated November 8, 2016, Sandra
4 Alvarado, Ph.D., a psychologist at Clinicas Del Camino Real, Inc.,
5 stated she had treated Plaintiff "[s]ince September 27th 2016 on a
6 biweekly basis." (AR 1016). Dr. Alvarado diagnosed Plaintiff inter
7 alia with major depressive disorder, recurrent, severe; and stated that
8 Plaintiff's signs and symptoms were anhedonia or pervasive loss of
9 interest in almost all activities, appetite disturbance with weight
10 change, decreased energy, thoughts of suicide, blunt, flat or
11 inappropriate affect, feelings of guilt or worthlessness, difficulty
12 thinking or concentrating, psychomotor agitation or retardation,
13 apprehensive expectation, memory impairment in the short, intermediate
14 or long term, and sleep disturbance. (AR 1016-17).⁹ Dr. Alvarado
15 found, inter alia, that Plaintiff's impairments or treatment would cause
16 Plaintiff to be absent from work for an average of more than four days
17 per month and Plaintiff would have difficulty working at a regular job
18 on a sustained basis because of "[l]imited movement due to chronic pain
19 and not feeling well due to diabetes" which "make [Plaintiff's]
20 depression worse[.]" (AR 1018).

22
23 The ALJ addressed Dr. Alvarado's opinions as follows:

24
25 The undersigned gives little weight to the opinions of the

26
27

28 ⁹ Dr. Alvarado stated that the clinical findings demonstrating the severity of Plaintiff's mental impairment and symptoms were "impaired memory (not remembering details at appointments) and depressed affect." (AR 1021).

1 claimant's treating psychologist at Exhibits 20F and 21F as
2 the extreme limitations therein are inconsistent with the
3 record showing no mental health treatment notes that showed
4 severe symptoms unmanageable with normal treatment.
5 Furthermore, this provider only recently started seeing the
6 claimant, and thus, does not have a longitudinal relationship
7 with the claimant.

8
9 (AR 35).
10

11 Since the ALJ did not find that Dr. Alvarado's opinions were
12 contradicted by another physician's opinion, the ALJ was required to
13 provide "clear and convincing" reasons for rejecting Dr. Alvarado's
14 opinions. See Trevizo, supra.
15

16 The ALJ properly rejected Dr. Alvarado's opinions because her
17 opinions, particularly her opinion concerning the average number of work
18 days per month Plaintiff would miss, was inconsistent with the medical
19 record which reflected that Plaintiff's mental health issues were caused
20 or precipitated by the pain she suffered from her injury. (see AR 355
21 [The Spine and Orthopedic Center, Progress Report dated December 11,
22 2013, noting: "She also expresses depression and admits suicidal
23 ideation. She states that the pain from her industrial injury has led
24 to her depression, insomnia, decreased energy, appetite fluctuations,
25 decreased concentration."], AR 339 [The Spine and Orthopedic Center,
26 Progress Report dated January 13, 2014, noting: "She continues with Dr.
27 Malkani for urinary incontinence issues. On 12/11/13, Dr. Malkani sent
28

1 the patient to the ER for suicidal ideations. He has started her on
2 Venlafaxine 37.5mg qd. She reports this medication is working well for
3 her and she denies any suicidal ideations at this time."], AR 929
4 [Letter from Kristin Wilkerson, PMHNP, at Clinicas Del Camino Real, Inc.
5 dated November 4, 2016, stating that she first provided mental health
6 treatment for Plaintiff on September 16, 2016, Plaintiff obtained
7 follow-up treatment on October 14, 2016 (at which medication was
8 prescribed), and Plaintiff was scheduled for follow-up treatment on
9 November 9, 2016]). See Morgan v. Comm'r of Soc. Sec., 169 F.3d 595,
10 603 (9th Cir. 1999)(“The ALJ is responsible for resolving conflicts in
11 medical testimony, and resolving ambiguity.”); see also 20 C.F.R. §
12 404.1527(d)(3)(“The more a medical source presents relevant evidence to
13 support a medical opinion, particularly medical signs and laboratory
14 findings, the more weight we will give that medical opinion. The better
15 an explanation a source provides for a medical opinion, the more weight
16 we will give that medical opinion.”); 20 C.F.R. § 404.1527(d)(4)
17 (“Generally, the more consistent a medical opinion is with the record
18 as a whole, the more weight we will give to that medical opinion.”).
19 This was a clear and convincing reason for discounting Dr. Alvarado’s
20 opinions.

21
22
23 The ALJ also properly rejected Dr. Alvarado’s opinions based on the
24 short length of time, and the limited number of times, Dr. Alvarado
25 treated Plaintiff (from September 27, 2016 to November 8, 2016, at most
26 four times, see AR 1016). See 20 C.F.R. § 404.1527(c)(2)(i)
27 (“Generally, the longer a treating source has treated you and the more
28 times you have been seen by a treating source, the more weight we will

1 give to the source's medical opinion."); compare Rose v. Berryhill, 256
2 F.Supp.3d 1079, 1089-90 (C.D. Cal. 2017)(finding that the treating
3 physician's treatment of the plaintiff 7 times during an 8-month period
4 was long enough for the treating physician to obtain a longitudinal
5 picture of the plaintiff's impairment).

6

7 2. Dr. Moelleken

8

9 Allan P. Moelleken, M.D., treated Plaintiff in connection with her
10 Workers' Compensation claim from February 12, 2013 to January 14, 2014.
11 (See AR 335-484). More than two years later, on March 25, 2016, Dr.
12 Moelleken treated Plaintiff during a follow-up visit, prescribing
13 medications and referring Plaintiff to a pain management consultation.
14 (See AR 694-96, 826-32).

15

16 Plaintiff submitted a one-page form from Dr. Moelleken, dated July
17 1, 2016, to the Appeals Council. (See AR 42).¹⁰ The Appeals Council
18 addressed the submitted form, stating: "The Administrative Law Judge
19 decided your case through June 30, 2015. This additional evidence does
20 not relate to the period at issue. Therefore, it does not affect the
21 decision about whether you were disabled beginning on or before June 30,
22 2015." (AR 2).

23

24

25 ¹⁰ Dr. Moelleken opined that Plaintiff is likely to be "off task"
26 25 percent or more of the time, Plaintiff is capable of low stress work
27 (because "pain level affect[s] stress"), Plaintiff's impairments are
28 likely to produce "good days" and "bad days", Plaintiff is likely to be
absent from work about four days per month as a result of the
impairments or treatment, and Plaintiff's impairments are reasonably
consistent with her symptoms and functional limitations.

1 As Respondent asserts (see Joint Stip. at 16), Plaintiff has waived
2 this issue because although she was represented by counsel she did not
3 allege to the Appeals Council that the ALJ failed to provide a reason
4 for rejecting Dr. Moelleken's opinions (see AR 319-20). See Shaibi v.
5 Berryhill, 883 F.3d 1102, 1109 (9th Cir. 2017)(plaintiff, when
6 represented by counsel, waived a challenge on appeal when plaintiff
7 failed to raise the issue during administrative proceedings before the
8 Social Security Administration); see also Meanel v. Apfel, 172 F.3d 1111
9 (9th Cir. 1999) ("We now hold that, at least when claimants are
10 represented by counsel, they must raise all issues and evidence at their
11 administrative hearings in order to preserve them on appeal.").
12

13 Nevertheless, since the Appeals Council appears to have looked at
14 Dr. Moelleken's form while not explicitly considering it, the form is
15 a part of the Administrative Record and must be considered by the Court
16 in reviewing the ALJ's decision. See Brewes v. Comm'r of Soc. Sec.
17 Admin., 682 F.3d 1157, 1163 (9th Cir. 2012) ("[W]hen the Appeals Council
18 considers new evidence in deciding whether to review a decision of the
19 ALJ, that evidence becomes part of the administrative record, which the
20 district court must consider when reviewing the Commissioner's final
21 decision for substantial evidence.").
22

23 Dr. Moelleken's opinion form, completed on July 1, 2016, does not
24 relate to the ALJ's determination of Plaintiff's nondisability for the
25 the period at issue (November 18, 2012 to June 30, 2015) since there is
26 no indication that Dr. Moelleken's opinion covers a period prior to
27 2016. Moreover, the checkbox form does not provide any clinical findings
28

1 supporting Dr. Moelleken's opinions. See Thomas v. Barnhart, 278 F.3d
2 947, 957 (9th Cir. 2002) ("The ALJ need not accept the opinion of any
3 physician including the treating physician, if that opinion is brief,
4 conclusory, and inadequately supported by clinical findings.").
5

6 **C. The ALJ Properly Determined That Plaintiff Could Perform Past
7 Relevant Work as a Small Products Assembler**

8 Plaintiff asserts that the ALJ failed to properly determine that
9 Plaintiff could perform her past relevant work as a small products
10 assembler because (1) it was not clear from Plaintiff's testimony
11 (particularly her testimony about her airplane parts assembler job) that
12 she worked as a small products assembler, and (2) the ALJ did not ask
13 the VE whether there was any conflict between the RFC (specifically,
14 pushing/pulling frequently but not constantly, occasional interaction
15 with coworkers, supervisors and the public, and employed in a low stress
16 job) and the Dictionary of Occupational Titles ("DOT") description of
17 the small products assembler occupation. (See Joint Stip. at 18-22).
18 Defendant asserts that the ALJ properly found that Plaintiff could
19 perform her past relevant work as a small products assembler as
20 generally and actually performed, and that any error by the ALJ in
21 asking the VE about a conflict between the RFC and the DOT was harmless.
22 (See Joint Stip. at 20-21).

23 As noted above, Plaintiff testified that she is unable to do her
24 past assembler jobs (antennas, watches) because she cannot sit or stand
25 for a long time. (AR 62-63). When the VE attempted to clarify
26 Plaintiff's past assembler jobs, Plaintiff stated that she had a third
27

1 past assembler job (airplane parts). (AR 64-65; see also AR 232, 242).
2 Plaintiff also testified that at her past assembler jobs she could
3 choose to either sit on a stool or stand. (AR 65).

The VE testified that even though Plaintiff did different things at her past assembler jobs, the duties she performed corresponded to the job of small products assembler (DOT 706.684-022, light work, Specific Vocational Preparation 2)¹¹, noting that Plaintiff's past assembler jobs allowed a sit/stand option and did not require lifting over 10 pounds, and that all of Plaintiff's past assembler jobs seemed to have the same exertional requirements. (See AR 66-67). Plaintiff testified that she

¹¹ DOT 706.684-022 Assembler, Small Products I, states, in pertinent part:

Performs any combination of following repetitive tasks on assembly line to mass produce small products, such as ball bearings, automobile door locking units, speedometers, condensers, distributors, ignition coils, drafting table subassemblies, or carburetors: Positions parts in specified relationship to each other, using hands, tweezers, or tongs. Bolts, screws, clips, cements or otherwise fastens parts together by hand or using handtools or portable powered tools. Frequently works at bench as member of assembly group assembling one or two specific parts and passing unit to another worker. Loads and unloads previously setup machines, such as arbor presses, drill presses, taps, spot-welding machines, riveting machines, milling machines, or broaches, to perform fastening, force fitting, or light metal cutting operation on assembly line. May be assigned to different work stations as production needs require or shift from one station to another to reduce fatigue factor. May be known according to product assembled.

STRENGTH: Light work - Exerting up to 20 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or up to 10 pounds of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work.

1 performed the assembler job putting together watches beginning in 2001
2 and thereafter performed the assembler job putting together antennas.
3 (AR 67).
4

5 The VE testified that a hypothetical person -- approaching advanced
6 age, limited education, with Plaintiff's RFC -- could do Plaintiff's
7 past assembler jobs. (See AR 68-70).
8

9 The ALJ found, based on the VE's testimony about Plaintiff's past
10 relevant work (small products assembler [DOT 706.684-022, light
11 exertional level, SVP 2) and Plaintiff's ability to perform her past
12 relevant work given Plaintiff's RFC, that Plaintiff was able to perform
13 her past relevant work as actually and generally performed. (See AR
14 35).
15

16 Plaintiff contends that the ALJ erred in finding that Plaintiff
17 could perform past relevant work as a small products assembler because
18 her past assembler job for airline parts, under DOT 806.381-022
19 [Assembler, Aircraft Power Plant], 806.381-026 [Assembler, Aircraft,
20 Structures and Surfaces], and 806.361-014 [Assembler-Installer,
21 Generally], requires a medium exertional level. (See Joint Stip. at 18-
22 19). The Court disagrees.
23

25 The ALJ did not err in finding that Plaintiff could perform past
26 relevant work as a small products assembler as actually and generally
27 performed because the testimony and statements provided by Plaintiff
28

1 about her past assembler jobs was consistent with the small products
2 assembler job identified in DOT 706.684-022. See AR 233 ["I would
3 perform the mechanical assembly of antenna parts. I would have to place
4 the parts in a machine that would show whether it worked or not."; When
5 asked about lifting and carrying, Plaintiff stated, "They were small
6 parts that would be reviewed to make sure they operated the way that
7 they were supposed to."; and Plaintiff stated that the heaviest weight
8 she lifted was less than 10 pounds and that she frequently lifted less
9 than 10 pounds.], AR 65 [Plaintiff testified at the hearing that at her
10 past assembly jobs she could sit on or a stool or stand up, whatever she
11 chose], AR 232 ["I worked for an airplane part manufacturing, we would
12 assemble the airplane parts."; "Most of the parts were not large and did
13 not weigh that much."; The heaviest weight Plaintiff lifted was 10
14 pounds, and Plaintiff frequently lifted less than 10 pounds], AR 242
15 ["[P]arts for airplanes, assembling parts together"; "We didn't carry
16 anything[,] parts were small; The heaviest weight Plaintiff lifted was
17 less than 10 pounds, and Plaintiff frequently lifted less than 10
18 pounds]).
19

20
21 Plaintiff also contends that the ALJ erred in failing to ask the
22 VE whether there was any conflict between the RFC (specifically,
23 pushing/pulling frequently but not constantly, occasional interaction
24 with coworkers, supervisors and the public, and employed in a low stress
25 job) and the DOT 706.684-022 description of the small products assembler
26
27
28

1 occupation. (See Joint Stip. at 19-22).¹²

2

3 An ALJ may not rely on a vocational expert's testimony regarding

4 the requirements of a particular job without first inquiring whether the

5 testimony conflicts with the DOT, and if so, why it conflicts. Massachi

6 v. Astrue, 486 F.3d 1149, 1152-53 (9th Cir. 2007)(citing Social Security

7 Ruling 00-4p).

8

9 However, since the DOT for the job of small products assembler does

10 not address the pushing/pulling, interaction, and stress level

11 limitations, as Plaintiff acknowledges (see Joint Stip. at 19), there

12 was no conflict between the VE's testimony and the DOT. See e.g., Dewey

13 v. Colvin, 650 Fed.Appx. 512, 514 (9th Cir. 2016); McDaniel v. Colvin,

14 2017 WL 1399629, *5 (C.D. Cal. Apr. 18, 2017)("[T]here can be no

15 conflict between the vocational expert's testimony and the DOT where,

16 as here, the DOT is silent on the subject in question."); citation

17 omitted).

18

19

20 Therefore, the ALJ did not err in relying on the VE's testimony

21 that Plaintiff was able to perform her past small products assembly job

22 as actually and generally performed.

23 //

24 //

25

26

27 ¹² The Court will address the merits of Plaintiff's assertion,

28 even though, as Defendant contends, Plaintiff has waived this issue (see

Joint Stip. at 20-21).

ORDER

For the foregoing reasons, the decision of the Commissioner is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 14, 2019

/s/

ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE